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Letter dated 2 May 2011 from the Permanent Representative of France to the United Nations addressed to the Secretary-General

I have the honour to inform you that, during the French presidency, the Security Council will hold a debate on Wednesday, 18 May 2011 on the situation concerning the Democratic Republic of the Congo. France has prepared a concept paper that will serve to guide the discussions (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council in connection with the item entitled "The situation concerning the Democratic Republic of the Congo".

(*Signed*) Gérard **Araud**

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Annex to the letter dated 2 May 2011 from the Permanent Representative of France to the United Nations addressed to the Secretary-General

Concept paper

The situation concerning the Democratic Republic of the Congo

The United Nations has had a long-standing presence in the Democratic Republic of the Congo. The 500-person observation mission established in 1999 has grown into one of the largest peacekeeping operations with multiple dimensions that include protection of civilians, support for security sector reform and institution-building. The role of a peacekeeping operation like the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) is to take action from the outset of the post-crisis phase and initiate stabilization activities that will create conditions for more sustainable development.

Since the adoption of Security Council resolution 1925 (2010) in May 2010, particular emphasis has therefore been placed on stabilization and peacebuilding efforts, which now constitute the second focus of the mandate, after the protection of civilians. In the Democratic Republic of the Congo, stabilization is the goal of the International Security and Stabilization Support Strategy and the Stabilization and Reconstruction Plan established by international actors and the Congolese Government with the support of MONUSCO. Other stakeholders, such as development banks, United Nations funds and programmes and bilateral or regional donors, are in charge of medium- and long-term efforts to ensure the country's development.

The context of the debate that France wishes to organize in the Security Council is the gradual stabilization of the Democratic Republic of the Congo. This debate should allow the Council to take stock of the situation with both the Congolese authorities and the international community and to consider four key issues for the stabilization of the Democratic Republic of the Congo:

1. **With respect to security**: The eastern part of the country remains unstable and accounts for the bulk of security problems. In the west, however, Equateur Province has also faced security challenges and is an area of concern: 120,000 persons fled the region in 2009 for the neighbouring Republic of the Congo. What action should be taken to strengthen security, particularly in the eastern Democratic Republic of the Congo?

2. **With respect to the electoral process**: Presidential and legislative elections represent the next major item on the timetable and they are a necessary precondition for the consolidation of State authority. How can the international community and MONUSCO contribute to the Congolese Government's organization of a free and transparent electoral cycle to begin in November 2011?

3. **With respect to governance and institution-building**: What are the next steps needed to ensure the consolidation of democratic institutions and State authority throughout the country, and more particularly in the east?

4. **With respect to economic development**: Longer-term stabilization of the Democratic Republic of the Congo requires real economic expansion. How can the foundation be laid for long-term economic development?

1. What action should be taken to strengthen security, particularly in the eastern Democratic Republic of the Congo?

As the Secretary-General stressed in his report to the Security Council in March 2010, the security situation throughout the country has clearly improved in recent years: 8 of the 11 provinces have now emerged from conflict and have made clear progress, considering the enormous challenges that faced them.

Nevertheless, in the west, Equateur Province experienced unrest in 2009 that led to the departure of 120,000 refugees for the Republic of the Congo, accounting for one quarter of refugees outside the borders of the Democratic Republic of the Congo. That instability is a source of concern.

There is continued tension in the east in particular, despite the integration process for the Congrès national pour la défense du peuple (CNDP). The security issue in the region derives not only from ongoing activities by rebel groups but also from the behaviour of some members of the regular army, particularly those who came from armed groups. A combination of military, political and institutional responses is required:

- With regard to military activities, action to combat the rebels of the Forces démocratiques de libération du Rwanda (FDLR) is yielding significant results. FDLR is attempting to maintain its military capabilities through growing violence and opportunistic alliances. The success in recent months of the disarmament, demobilization, repatriation, resettlement and reintegration programme has nonetheless led the United Nations to be "reasonably optimistic" about the chances of making progress. Other armed groups, including combatants from Uganda and Burundi, particularly the Lord's Resistance Army (LRA), whose activities in 2011 have newly displaced more than 30,000 people in the Democratic Republic of the Congo, are still active. Stability in the eastern Democratic Republic of the Congo is thus a political issue that must be considered at the regional level.

- The accelerated integration of CNDP rebels into the regular army and the national police in 2009 did not allow for any true "brassage", which would have entailed checking the background of militia members and posting them throughout the country. The former rebel group, which is well organized, wields powerful influence that it has further bolstered by taking control of certain mine resources, despite a prohibition against mining operations put in place by the Congolese Government until March 2011. Further political discussion appears necessary to seek a sustainable, stable solution.

- In terms of institutions, the strengthening of security in the eastern Democratic Republic of the Congo and throughout the rest of the country will require capacity-building and reform of the security forces:

  - Army reform: So far, attempts to reform the Armed Forces of the Democratic Republic of the Congo have yielded inadequate results, particularly owing to the difficulty of integrating armed groups. In 2009 the Congolese authorities launched an army reform plan to be implemented

over 15 years. The goal is to form a new Congolese "republican" army comprising 80,000 men (there were 150,000 men in December 2010). A new organization process has been under way since late 2010 with "regimentation" aimed at restructuring the troops, improving their quarters and conducting training to improve performance. Some progress has been made in addressing the gross misconduct and criminal behaviour of some members of the Armed Forces of the Democratic Republic of the Congo, and the Government's zero-tolerance policy must continue to be implemented.

- Police reform has also been delayed. One quarter of police officers have reached the retirement age limit. The problems in this area — capacity, ethics and respect for human rights, among others — are similar to those faced by the army. In principle, the police is supposed to undergo reform and gradually take over from the army and MONUSCO in areas that have been secured, through redeployment at 34 sites in North and South Kivu and Haut-Uélé. However, the implementation of reform remains difficult.

The laws on the organization of the army and police, which have been pending for the past two years, should be adopted at the parliamentary session in March-June 2011. Implementation plans are urgently needed.

2. How can the international community and MONUSCO contribute to the Congolese Government's organization of a free and transparent election cycle to begin in November 2011?

The holding of free, transparent and democratic elections is a determining factor for strengthening the authority and legitimacy of the State. Presidential and legislative elections are scheduled for late 2011 and provincial, local and municipal elections are to take place in 2012 and 2013. These elections will provide an opportunity to modernize the State and promote the emergence of a new generation, particularly at the local level. Local elections could not be organized in 2007.

The international community, which provides a substantial percentage of resources for the overall State budget, is sharing with the Congolese Government the costs of the election finance plan (with the Government covering 60 per cent). This support will help build Congolese democracy, which is currently characterized by progress (such as the growth of media outlets and expressions of opinion and State engagement in the electoral process) that is still threatened by difficult conditions and weak administrative structures. The international community is devoting special attention to ensuring the transparency of the electoral process.

The Congolese Government has clearly expressed its desire to hold free, transparent elections. It could elaborate on this goal with a road map to be presented to the Security Council on 18 May (see "Objectives of the debate" below). To meet the challenge of organizing the elections, regular and constructive dialogue between the Congolese authorities, the international community, and the opposition, within the election monitoring committee will be crucial.

MONUSCO, for its part, should strengthen the dialogue with the Congolese authorities, in particular with the National Independent Electoral Commission, concerning the planning and conduct of the electoral campaign. MONUSCO should provide the Security Council and the Secretary-General, on a regular basis, with an

assessment of the electoral process and a report on the Mission's contribution to the organization of free and transparent elections within its existing resources.

3. What are the next steps needed to ensure the consolidation of democratic institutions and State authority throughout the country, and more particularly in the east?

The overall restoration of security in the western provinces promoted the consolidation of State authority in those provinces, albeit to varying degrees. Similarly, the stabilization of the eastern areas of the Democratic Republic of the Congo, once those areas have been secured, will require the re-establishment of State institutions and strengthening the capacities of democratic institutions. This also includes restoring basic services (access to justice, the state of law, road access, and priority health and education infrastructure). MONUSCO is providing support for those efforts in the east, particularly through the Stabilization and Reconstruction Plan. It expects follow-on missions by development stakeholders (World Bank, United Nations Development Programme (UNDP) and bilateral or regional donors) to ensure the sustainability of the projects implemented.

Institution-building is an essential tool for intercommunity reconciliation and dispute resolution, particularly in situations such as the large-scale return of refugees or displaced persons that the eastern Democratic Republic of the Congo now faces. Currently, just over 400,000 Congolese refugees living abroad are waiting to return, in the wake of 223,000 who had already returned since 2004, most of whom came from the United Republic of Tanzania and Zambia.[1] At the same time, the Democratic Republic of the Congo hosts 160,000 foreign refugees, mainly Angolans and Rwandans. Internally displaced persons face especially dismal prospects: the Democratic Republic of the Congo had at the end of 2010 more than 1.6 million internally displaced persons, more than 1.2 million of whom are in the two Kivu provinces.[2] They cannot return in satisfactory conditions unless a minimum of care services are provided for, particularly by local government and agencies.

Beyond the issue of refugees and displaced persons, it appears that reconciliation mechanisms will be needed to stabilize the country. Ongoing impunity for crimes committed will remain a source of insecurity. In that connection, the initiative by the Congolese Minister of Justice and Human Rights to follow up on the proposals made in the report of the Office of the United Nations High Commissioner for Human Rights on crimes committed in the Democratic Republic of the Congo from 1993 to 2003 (mapping exercise), particularly by strengthening the Congolese justice system, should be welcomed and supported.

4. How can the foundation be laid for long-term economic development?

Stabilization requires, lastly, the creation of an environment conducive to the resumption of economic and social activities. This is generally possible only when the security situation and the re-establishment of a fundamental state of law allow.

In order to achieve this goal, several lines of action must be pursued simultaneously:

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[1] Statistics from UNHCR as at 28 February 2011.

[2] Statistics from the Office for the Coordination of Humanitarian Affairs as at 31 December 2010.

Firstly, given the limited resources available, prioritizing Government measures will be a key factor for successful stabilization. That will be supported during the 2012 budget process with a triennial programming approach to setting priorities. Improvement of transparency of the business environment and regulatory framework in the Democratic Republic of the Congo is also decisive in this process. Furthermore, regional economic cooperation should play a key role.

Lastly, better management of the mining sector in the east will be essential to stabilization. The decision to authorize the resumption of mining operations in the Kivus and Maniema must be accompanied by measures to organize and monitor the process from the mine shafts through to export channels.

The decisions[3] taken in this respect by the International Conference on the Great Lakes Region at the Lusaka summit in December 2010 are encouraging. President Kabila recalled his determination to "fight mercilessly against the illegal exploitation of natural resources in the Great Lakes region". The traceability of mineral products, advocated by Organization for Economic Cooperation and Development guidelines, was endorsed by the States of the region. The purpose of establishing five trading counters, which is part of the mandate of MONUSCO, is to bring together near the most strategic sites the State services involved in monitoring mineral products. Implementation continues to be hindered by several obstacles. It is essential and urgent for the mining sector to be effectively organized and managed in order to reduce instability in the area.

Objectives of the debate

The debate will allow the Congolese authorities to present the actions carried out and planned to stabilize the country, and the difficulties they have encountered. Based on the analyses and commitments set out by the Congolese authorities, the international community will consider what support it could provide to the Democratic Republic of the Congo, particularly through MONUSCO. The following issues may be discussed:

1. With respect to security:

   - What does the Congolese Government consider its most serious security threats and vulnerabilities? How can security in the east be improved (including the issues of refugees, the Goma process and FDLR) and how can the regional partners of the Democratic Republic of the Congo be engaged in the crisis recovery process?
   - How should the crisis simmering in Equateur Province be evaluated and addressed to promote the return of refugees to that area?
   - What is the status of the legislative framework for the reform of the security forces? What are the priorities of the Congolese Government regarding this reform?
   - How can the international community better respond to the needs of the security forces and continue to help build their capacity?

[3] The "six tools": regional certification mechanism, harmonization of national legislation, regional database on the flow of minerals, formalization of the traditional mining sector, promotion of the Extractive Industries Transparency Initiative and early warning mechanism.

2. With respect to elections:

- What difficulties have been identified by the Congolese Government and MONUSCO in the election planning process?
- What specific measures have the Congolese authorities implemented and what measures do they intend to take with respect to:
  - The constitutional, legislative and regulatory framework for elections.
  - Freedom of expression and movement, dialogue among political forces, equal treatment of candidates and protection of human rights defenders, in the capital as well as in the provinces.
  - The projected election timetable.
  - Modalities for enhanced dialogue in Kinshasa between the representatives of the international community, especially MONUSCO, and the Congolese authorities, particularly through the election monitoring committee.
- How can MONUSCO contribute, beyond its logistical support, to the success of the electoral cycle that will begin in November 2011?

3. With respect to governance:

- What measures have the Congolese authorities taken and what measures do they intend to take in order to build institutional capacity to address impunity? How can the international community and MONUSCO support these efforts?

4. With respect to economic development:

- What are the priority needs of the stabilization and reconstruction plan for the eastern provinces?
- How does the Congolese Government intend to implement, in the short and medium terms, the tools adopted by the International Conference on the Great Lakes Region at Lusaka? What are the main difficulties to overcome?

Proposed participants

- 15 members of the Security Council
- Ministerial representative of the Democratic Republic of the Congo (Minister for Cooperation)
- Speakers: Secretary-General of the United Nations; Special Representative of the Secretary-General R. Meece; representatives of UNDP and the World Bank; representatives of the African Union and the European Union

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Letter dated 3 May 2011 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to transmit herewith a letter dated 20 April 2011 from the High Representative for Bosnia and Herzegovina enclosing the thirty-ninth report on the implementation of the Peace Agreement for the period 16 October 2010 to 20 April 2011 (see annex).

I should be grateful if you would bring this document to the attention of the members of the Security Council.

(*Signed*) **BAN Ki-moon**

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Annex

Letter dated 20 April 2011 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General

[Original: English]

Pursuant to Security Council resolution 1031 (1995), by which the Council requested the Secretary-General to submit to it reports from the High Representative in accordance with annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the thirty-ninth report (see enclosure). I would ask for this report to be circulated to the members of the Security Council for their consideration.

This is my fifth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina and European Union Special Representative on 26 March 2009. The present report covers the period from 16 October 2010 to 20 April 2011.

Should you or any Council member require any information beyond what is provided in the attached report or have any questions regarding its contents, I should be pleased to provide you with it.

(*Signed*) Valentin **Inzko**

Enclosure

Thirty-ninth report of the High Representative for Bosnia and Herzegovina

16 October 2010-20 April 2011

Summary

This report covers the period from 16 October 2010 to 15 April 2011. Apart from visa liberalization, which came into effect on 15 December 2010, the authorities have failed to address any long-needed reforms. As a result there has been no progress towards either European Union or NATO integration. In particular, no progress has been achieved in addressing key reforms which are required for further progress towards European Union integration, such as implementing the ruling of the European Court of Human Rights in the "Sejdic and Finci" case, and adopting and implementing state-level laws on a population census and state aid. Equally, completion of the five objectives and two conditions necessary for the closure of the Office of the High Representative has been stalled.

During the reporting period, legal and political actions from Republika Srpska challenging the State-level institutions of Bosnia and Herzegovina, their competencies and laws, the authority of the High Representative and the Steering Board of the Peace Implementation Council, have intensified. In April 2011, the Republika Srpska National Assembly adopted parliamentary conclusions and a decision to hold a referendum which would potentially reject the authority of the Bosnia and Herzegovina Court and Prosecutor's Office within that entity, as well as the High Representative's authorities, in particular laws enacted by the High Representative. These actions are in conflict with the General Framework Agreement for Peace — annexes 4 and 10. In addition, during the reporting period, there have been further challenges from the Republika Srpska related to annexes 2, 4 and 10 of the General Framework Agreement for Peace.

Since the general elections held in October 2010, the use of nationalistic and divisive rhetoric has increased substantially within both entities, at times rising to the level of hate speech. Republika Srpska authorities have openly called for state dissolution, questioning the integrity and sovereignty of Bosnia and Herzegovina and refuting the legitimacy of the Bosnia and Herzegovina Constitutional Court and other State-level institutions. Other Republika Srpska political leaders have frequently questioned the sustainability of Bosnia and Herzegovina. The same leaders also continued to challenge the rulings of the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice that qualified as genocide the massacre of Bosniaks who had sought refuge in the United Nations-protected area of Srebrenica in July 1995.

Political leaders in the Federation have also increased their inflammatory rhetoric, and following the general elections, there were calls for the establishment of a third [Croat] entity. In April 2011, two Bosnian Croat parties, the Croat Democratic Union (HDZ BiH) and HDZ 1990 led the organization of a Croat National Assembly in Mostar to highlight their dissatisfaction with the position of Bosnian Croats within Bosnia and Herzegovina. They complained about the way the

Federation authorities were formed and called for a Croat majority federal unit to be formed through constitutional changes.

Following the general elections in October 2010, relations within the Federation became tense owing to a political impasse over government formation. The two HDZ parties, in breach of the Federation Constitution, prevented the formation of the Federation House of Peoples by blocking the elections of the delegates from Croat majority cantonal assemblies to that body. This in turn prevented the timely formation of the Federation authorities, which were elected only in March 2011. At the time of writing, more than six months after elections, still not all delegates had been appointed to the Federation House of Peoples. Equally, numerous vital positions in the Federation remain unfilled because of disputes over ethnic representation in these institutions.

The negative political atmosphere has led to the failure of the parties to form a State-level government since the October 2010 general elections. A caretaker government has been in place at the State level since the elections. In addition, the Bosnia and Herzegovina Parliamentary Assembly has also not been functioning in the past six months, and no delegates to the Bosnia and Herzegovina House of Peoples have been appointed from the House of Peoples of the Federation Parliament. Consequently, no legislation has been adopted at the State-level in the past six months. Equally, a regular State-level budget has not been adopted. On a more positive note, the new Bosnia and Herzegovina Presidency, which is elected directly, is operational, and cooperation among the three members has improved in comparison to the previous mandate.

None of the outstanding objectives and conditions necessary for the closure of the Office of the High Representative was met during this reporting period. To the contrary, there was regression in relation to State and defence property, and there have also been difficulties in implementing the objectives to fiscal sustainability and the rule of law. The Republika Srpska government has taken unilateral steps to regulate State property by adopting its own State Property Law. If implemented, this law would make completion of two of the objectives set as prerequisites for the Office of the High Representative closure — specifically those dealing with the apportionment of State and apportionment of defence property — far more difficult if not impossible. In relation to Brcko District, Republika Srpska has complied with the High Representative's 18 September 2009 Decisions on the Brcko District's electricity supply. However, the Republika Srpska continues to send signals that raise questions about its commitment to fundamental provisions of the Brcko Final Award.

Through its continued presence, the European Union military mission in Bosnia and Herzegovina (EUFOR) has continued to reassure citizens that the environment in the country remains safe and secure despite the tense political situation. The High Representative continues to support the extension of the executive mandate for EUFOR.

I. Introduction

1. This is my fifth report to the Secretary-General since assuming the post of High Representative for Bosnia and Herzegovina — as well as the post of European Union Special Representative — on 26 March 2009. The present report provides a narrative description of progress made towards attaining the goals outlined in previous reports, registers factual developments, notes relevant statements made during the reporting period, and provides my assessment of mandate implementation in key areas, not least the minimum objectives and conditions which must be met before the Office of the High Representative can close. I have focused my efforts on facilitating progress in these areas, in line with my primary responsibility to uphold the General Framework Agreement for Peace in Bosnia and Herzegovina, while also facilitating progress towards Euro-Atlantic integration. Regrettably, a substantial part of my efforts has been dedicated to redressing negative developments, in particular divisive actions taken against Bosnia and Herzegovina state institutions.

II. Political update

General political environment

2. On 8 November 2010, the European Union member States adopted a Decision to abolish short-term visa requirements for Bosnia and Herzegovina citizens holding biometric passports. This decision entered into force on 15 December and has been widely welcomed and celebrated in the country. Bosnia and Herzegovina also served a successful term as president of the Security Council during January 2011. These were the main positive developments during the reporting period.

3. At the same time, and despite international efforts to improve relations in the region, the overall political climate inside Bosnia and Herzegovina continued to deteriorate. As a result, there has been no progress on the Euro-Atlantic integration agenda or in addressing the outstanding objectives and conditions for the closure of the Office of the High Representative.

General elections aftermath

4. The general elections in Bosnia and Herzegovina were held on 3 October 2010. In its preliminary assessment, the Office for Democratic Institutions and Human Rights and other international election monitoring missions considered that the elections were free and fair and generally held in line with international standards. However, they noted that the general elections — based on the Election Law and the Bosnia and Herzegovina Constitution — violate the European Convention of Human Rights and its Protocols. The Office for Democratic Institutions and Human Rights and other international election observers reiterated that Bosnia and Herzegovina urgently needs to amend its Constitution and Election Law in this regard. Although the elections were conducted professionally by the Bosnia and Herzegovina election authority, cases of electoral fraud surfaced in both entities of Bosnia and Herzegovina. The Bosnia and Herzegovina election

authority sanctioned officials responsible for electoral fraud and reported those cases to the State Prosecutor's Office.[1]

5. Following the confirmation of the election results on 2 November 2010, Republika Srpska had formed a government by 1 February 2011. Government formation in the Federation was far more complicated, and the government which was established in late March has been challenged on political and legal grounds, in particular by the HDZ BiH and HDZ 1990. A State-level government has yet to be formed, more than six months after the elections. Mayoral elections were held on 16 January in eight municipalities across Bosnia and Herzegovina. In six municipalities (Bihac, Vogosca, Srebrenik, Srbac, Orasje/Donji Zabar, Odzak/Vukosavlje) elections were necessitated by the election of the incumbent mayors to legislative posts in the October General Elections. In two other municipalities (Kalesija/Osmaci and Sekovici), the mayors had been recalled under the relevant laws.

Challenges to the General Framework Agreement for Peace

6. During the reporting period, anti-Dayton activities have continued (specifically in relation to annexes 2, 4 and 10 of the General Framework Agreement for Peace), and the use of nationalistic and provocative rhetoric has increased substantially.

7. In September 2010, the Republika Srpska Government tasked the responsible Republika Srpska authorities to draw up an action plan to make a precise description of the Inter-Entity Boundary Line and to mark it. It threatened unilateral action in the future should attempts to demarcate the Boundary Line as prescribed in the Dayton Peace Agreement not proceed quickly. Worryingly, Republika Srpska authorities have adopted legal acts and still use official maps which define the Republika Srpska "border" as running along the wartime Inter-Entity Boundary Line through Brcko District (the Inter-Entity Boundary Line in the Brcko District was abolished under the Final Award). To date, the Republika Srpska authorities have declined to provide assurances that Republika Srpska will honour annex 2 of the General Framework Agreement for Peace and all aspects of the Brcko Final Award. The Federation provided such assurances early in 2011.

8. Political leaders from Republika Srpska have continued to question the sovereignty and sustainability of Bosnia and Herzegovina, and they have openly called for the dissolution of Bosnia and Herzegovina.[2] They have also rejected the authority of the Bosnia and Herzegovina Constitutional Court, and the competences of other state-level judicial institutions.[3] In particular, on 13 April the Republika Srpska National Assembly adopted a set of conclusions rejecting the authority and the competences of State-level judicial institutions as well as directly challenging the High Representative and his powers and in particular the laws enacted by the

[1] The Central Election Commission initiated disciplinary proceedings against polling station committee members in polling stations where election fraud occurred. To date the Central Election Commission has sanctioned more than 40 polling station members, and referred the cases to the Bosnia and Herzegovina State Prosecutor. More cases are currently under review.

[2] "BiH is still an experiment by foreigners and in order for people here to live better this country must be divided." Republika Srpska President Milorad Dodik, 10 March 2011.

[3] "Any decision made by the BiH Constitutional Court contrary to our own will not be accepted by the RS." Republika Srpska President Milorad Dodik, 15 January 2011.

High Representative. The Conclusions undermine the entire constitutional system of division of responsibilities between the State and the Entities as established by Annex 4 of the General Framework Agreement for Peace, the Constitution of Bosnia and Herzegovina, and as further interpreted by the Constitutional Court of Bosnia and Herzegovina through its rulings. The Republika Srpska authorities also adopted a decision on a referendum in that entity on the Bosnia and Herzegovina judicial institutions, the legislation creating them, and the powers of the High Representative. The holding of a referendum on the High Representative's powers and Bosnia and Herzegovina legislation are in breach of the Bosnia and Herzegovina Constitutional Framework and the international obligations of Bosnia and Herzegovina.

9. In response to language in the Peace Implementation Council Steering Board 1 December 2010 communiqué condemning genocide denial in relation to Srebrenica, the Republika Srpska authorities issued a statement describing the position of the Peace Implementation Council Steering Board as "arbitrary", "unnecessary" and "unacceptable". They have also continued to challenge the rulings of the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice that qualified as genocide the massacre by Serbs of Bosniaks who had sought refuge in the United Nations-protected area of Srebrenica in July 1995. These remarks have exasperated representatives of the other nationalities in Bosnia and Herzegovina.

10. Since the election campaign, the leaders of the Bosnian Croat HDZ BiH and HDZ 1990 parties have continued to call occasionally for a third [Croat] entity. In a December 2010 interview, then Federation President (Bosnian Croat) also referred to the "realistic possibility" of the dissolution of Bosnia and Herzegovina.

High Representative decisions during the reporting period

11. On 5 January, the High Representative issued the Order Suspending the Application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban. Under the High Representative's Order, the application of the Republika Srpska State Property Law remains suspended until a final decision of the Bosnia and Herzegovina Constitutional Court on the Law enters into force, taking into consideration that there is a need to preserve ownership interests of the State and other levels of government.

12. On 26 January, the High Representative issued a Decision enacting the Decision on Temporary Financing of the Federation of Bosnia and Herzegovina for the Period January-March 2011 as a substitute for the not-yet-constituted Federation House of Peoples and to avoid the possibility of a halt to all budget payments in the Federation entity.

13. On 28 March, the High Representative suspended two decisions issued by the Central Election Commission pending review by the Federation Constitutional Court. Recalling the Office of the High Representative Legal Opinion of 2001 and subsequent interpretation from 2007, the High Representative issued a Decision suspending the Central Election Commission decisions in order to avoid legal uncertainty. That decision remains in force for the time being.

14. In February, a Decision by the High Representative was prepared in order to annul the decision by the then Federation President and the two Vice-Presidents

seeking to appoint three judges to the Federation Constitutional Court. The Decision of the Federation authorities would have violated the Federation Constitution and the State-level Law on the High Judicial and Prosecutorial Council (HJPC Law), as it ignored the respective roles of the Federation House of Peoples and the High Judicial and Prosecutorial Council in the selection process, as provided for in the HJPC Law and the Federation Constitution. Following strong pressure from the international community, the then Federation President finally annulled her own decision.

Five objectives and two conditions for closure of the Office of the High Representative

15. Backsliding occurred on some of the remaining objectives necessary for the closure of the Office of the High Representative during the reporting period. Following the adoption of the Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban (Republika Srpska State Property Law) on 14 September 2010, and the respective request submitted by the Caucus of delegates of the Bosniak people in the Republika Srpska Council of Peoples, on 10 December 2010 the Council for Protection of Vital National Interests of the Republika Srpska Constitutional Court ruled that the Law did not violate the vital interest of the Bosniak people. The Council ruled that the Republika Srpska National Assembly is competent under the Republika Srpska Constitution to regulate, inter alia, the status of State property situated in the territory of Republika Srpska. The ruling also emphasized that the Council is not authorized to assess whether the contested law is in harmony with the provisions of the Bosnia and Herzegovina Constitution or with international agreements.

16. In response to the ruling, and to prevent Republika Srpska from disposing of State property prior to the resolution of planned legal challenges before the Bosnia and Herzegovina Constitutional Court, on 5 January 2011 the High Representative issued his Order Suspending the Application of the Law on the Status of State Property Situated in the Territory of Republika Srpska and Under the Disposal Ban. Under the Order, the application of the Republika Srpska State Property Law is suspended until a final decision of the Bosnia and Herzegovina Constitutional Court on that Law enters into force, during which any change of ownership rights over State property in the territory of Republika Srpska is prohibited. On 6 January 2011, the Republika Srpska State Property Law was challenged at the Bosnia and Herzegovina Constitutional Court.

17. The Bosnia and Herzegovina Commission for State Property held only one session during the reporting period, on 21 December 2010. The Commission reviewed over 50 requests for exemptions from the High Representative's temporary ban on transfers of State Property, 7 of which were approved. Given the pending legal challenge to the Republika Srpska State Property Law and the High Representative's 5 January order, the Commission members suspended work on a State-level draft State property law.

18. Chances are diminishing for Bosnia and Herzegovina to make the reforms necessary for the start of its NATO Membership Action Plan-related Annual National Program by September 2011. The parties maintain diametrically opposed views on the right of the State to own prospective immovable defence properties. At the same time, administrative and political hurdles still hinder the destruction of

larger quantities of unsafe ammunition, weapons and explosives. In mid-March 2011, the Bosnia and Herzegovina Presidency requested the immediate suspension of the issuance of licences for weapons and military equipment export from Bosnia and Herzegovina. The mission of the Organization for Security and Cooperation in Europe (OSCE) to Bosnia and Herzegovina and the United Nations Development Programme welcomed the decision in the light of the recent weapons exports by Bosnia and Herzegovina to Armenia and Azerbaijan in breach of the Bosnia and Herzegovina commitments to the OSCE Principles Governing Conventional Arms Transfers, and in conflict with the European Union Council Common Position 2008/944/CFSP.

19. The resolution of the Brcko electricity issue marked an important step forward in terms of the Entities meeting the conditions for closing the Brcko Arbitral Tribunal and Supervision (although a number of Entity obligations to the Brcko District have not yet been met — including debts owed to the Brcko District, Entity citizenship, voting rights, and parliamentary ratification of legislation related to allocation of indirect tax revenues). Given the progress made, the Supervisor conducted consultations with all concerned parties regarding the future of international engagement in the Brcko District. Unfortunately, questions remain regarding the commitment of the Entities — particularly the Republika Srspka — to honouring fully all previously undertaken obligations under the Brcko Final Award. Strong, unambiguous assurances from the Republika Srspka regarding its commitment to fulfilling those obligations in the future would facilitate a discussion about the possible closure of the Tribunal and Supervision.

20. There has been only limited or no progress in implementation of the two objectives for the closure of the Office of the High Representative already declared completed. They relate to the rule of law and fiscal sustainability.

Bosnia and Herzegovina state-level institutions

Bosnia and Herzegovina Presidency

21. Two of the three members of the former Bosnia and Herzegovina State Presidency — Serb member Nebojsa Radmanovic and Croat member Zeljko Komsic — won re-election in the October 2010 General Elections. The Party of Democratic Action (SDA) candidate Bakir Izetbegovic won an unanticipated victory over incumbent Haris Silajdzic as the Bosniak Presidency member. The new Bosnia and Herzegovina Presidency was sworn in on 10 November 2010. During the reporting period, the new Presidency held seven regular and five extraordinary sessions.

22. The Bosnia and Herzegovina Presidency has placed strong emphasis on regional cooperation. On 31 January/1 February, the Presidency visited Croatia. This was the first visit of the tripartite Presidency to Croatia in four years and the first trip by the Bosnia and Herzegovina Presidency outside Bosnia and Herzegovina since the October 2010 elections. Although the two sides emphasized good relations and offered verbal commitments to European Union integration, they made little concrete progress in resolving the numerous open issues between the two countries. The Bosnia and Herzegovina Presidency also visited Slovenia on 28 February, and Slovenian authorities expressed their full support for the Bosnia and Herzegovina European Union perspective. Following his election, Bosniak Presidency member

Bakir Izetbegovic — while visiting Serbia — apologized for every innocent victim killed by the Bosnia and Herzegovina Army during the war.

Council of Ministers

23. The performance of the Council of Ministers deteriorated further during the reporting period. Although it has continued to meet regularly in a caretaker capacity since the General Elections of 3 October 2010, there has been little of substance achieved.[4] The Council of Ministers approved the Annual Platform on Intelligence-Security Policy and the Communications Strategy, together with an action plan for its implementation for the period 2010-2011 to improve transparency in institutional decision-making. The Council of Ministers also acted on a number of appointments.[5]

Bosnia and Herzegovina Parliamentary Assembly

24. The Bosnia and Herzegovina Parliamentary Assembly has been non-operational in the past six months owing to the political stalemate, and the delegates to one of the chambers, the Bosnia and Herzegovina House of Peoples, have not yet been appointed. Although the political parties represented in the Bosnia and Herzegovina Parliamentary Assembly have met on numerous occasions since the general elections, they have failed to agree on appointing leadership positions in the Parliament. These disagreements delayed the inauguration of the Bosnia and Herzegovina House of Representatives until 30 November. As a result of the political stalemate, no legislation has been passed in the reporting period.

25. As the Bosnia and Herzegovina Parliamentary Assembly was unable to appoint a new delegation to the Parliamentary Assembly of the Council of Europe after the October elections 2010, the members of the Bosnia and Herzegovina national delegation to the Parliamentary Assembly of the Council of Europe lost their rights to be present in the Assembly on 11 April 2011. As a consequence Bosnia and Herzegovina will not be allowed to participate in the work of the Council of Europe Parliamentary Assembly and its committees until a new delegation is sent.

Bosnia and Herzegovina suspended from the International Federation of Association Football and the Union of European Football Associations

26. Bosnia and Herzegovina was suspended from the International and European Football Federations on 1 April. On 5 March, the Bosnia and Herzegovina Football Federation rejected changes to its statute, which were demanded by the International Federation of Association Football and the Union of European Football Associations and which would have streamlined the Bosnia and Herzegovina Football Federation

[4] It adopted two new laws and five amendments to existing legislation. One of the laws was previously imposed by the High Representative.

[5] The Director and Deputy Director of the Plant Health Administration, Director and two Deputy Directors of the Bosnia and Herzegovina Institutions Common Services and President of the Bosnia and Herzegovina Competition Council. The Council of Ministers finally removed the Acting Director of the Indirect Taxation Administration and appointed a new Acting Director for 90 days, tasking the Indirect Taxation Administration Governing Board to conduct and complete the recruitment procedure for the nomination of a Director within 90 days. The appointment of the Acting Director violated the Law on Ministerial, Council of Ministers' and Other Appointments that states that short-term appointments cannot exceed two months and cannot be renewed.

so that it would have one President instead of a three-member Presidency. Representatives from Republika Srpska voted against these required changes.

Republika Srpska

Government formation

27. While the Republika Srpska Government had been approved by the Republika Srpska National Assembly on 29 December 2010, its formal approval came only on 1 February 2011, after the Vital National Interest Panel of the Republika Srpska Constitutional Court ruled that the appointment of the Republika Srpska Prime Minister did not violate Bosniak vital national interest. The Bosniak Caucus of the Republika Srpska Council of Peoples had argued that appointment of the Prime Minister (Serb) contravened the ethnic distribution of six high offices in Republika Srpska mandated by the Republika Srpska Constitution.

28. The Bosniak Caucus of the Republika Srpska Council of Peoples has also put two additional matters to the Republika Srpska Constitutional Court, one relating to that institution's decision-making processes, the other as to whether or not the Republika Srpska Council of Peoples has been legally formed. These appeals are pending. The Bosniak Caucus has also sought the opinion of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina on alleged violations of age limits by Republika Srpska Constitutional Court judges.

Political developments

29. The Republika Srpska Government has continued to criticize the Bosnia and Herzegovina Missing Persons Institute and Serbs working in that institution. Pressure against them was especially intense during the reporting period. That led to the resignation of Serb members of the Missing Persons Institute Managing Board. The campaign included picketing their offices and was amplified by media close to the Republika Srpska Government.

30. The Bosnia and Herzegovina Journalists' Association, which had been founded in 2004 as a country-wide association, disintegrated after Republika Srpska-based journalists left to form their own separate association, the Independent Association of Republika Srpska Journalists, on 10 January.

Federation of Bosnia and Herzegovina

Government formation crisis

31. There were significant delays in forming the Federation Government, which was established only on 17 March. The government formation was prevented by political disputes between two political blocks and by significant delays by some Cantons to appoint their delegates to the Federation House of Peoples. The Cantons in question (all of them majority Croat Cantons) acted in violation of the Federation Constitution and the Bosnia and Herzegovina Election Law. At the time of writing, one of these Cantons had still not elected its delegates to the Federation House of Peoples.

32. Following a months-long deadlock, on 17 March, the Social Democratic Party of Bosnia and Herzegovina (SDP), SDA, Croatian Party of Right (HSP) and People's Party Work for Betterment (NSRzB) parties convened a session of the Federation

House of Peoples and formed the Federation Government, despite the fact that not all delegates had been elected from the cantons to the Federation House of Peoples. That led to legal and political challenges from the main Croat parties — HDZ BiH and HDZ 1990, which brought the appointment of the Federation President and Vice-Presidents before the Bosnia and Herzegovina Central Election Commission and the Federation Constitutional Court. On 24 March, the Bosnia and Herzegovina Central Election Commission issued two decisions concluding that: first, the elections of the Federation President and the Vice-Presidents should be annulled; and second, that the conditions for the formation of the Federation House of Peoples had not been met.

33. As the issue of constitution of the Federation House of Peoples and subsequent formation of caucuses, election of the President and Vice-Presidents as well as the nomination of the Government are matters also arising under the Federation Constitution, the HDZ parties also submitted appeals to the Federation Constitutional Court. To avoid competing claims and in order to prevent legal ambiguity, the High Representative issued a decision temporarily suspending the decisions of the Central Election Commission. This Decision provoked strong reactions from the HDZ BiH and HDZ 1990, as well as from Republika Srpska. In the meantime, the requests to the Federation Constitutional Court have been withdrawn. The Decision of the High Representative remains in force for the time being.

Federation budget

34. Following its adoption by the Federation Government on 24 March and the Federation House of Representatives on 25 March, the Federation Budget for 2011 was adopted by the Federation House of Peoples on 26 March. Although the budget will probably be rebalanced within 90 days, its adoption prior to the expiry of the temporary financing period on 31 March has allowed for undisturbed budget payments and has prevented new elections in the Federation.

Appointments in the Federation

35. Due to strained relations in the Federation, numerous vital positions have remained vacant for over two years. They include three seats on the Federation Constitutional Court bench. Moreover, the Federation has failed to meet obligations under its Constitution for an equal distribution among the three constituent peoples of six key positions in the entity's executive, legislative and judicial institutions.

36. On 3 February, the then Federation President and the two Vice-Presidents signed a decision seeking to appoint three judges to the Federation Constitutional Court. This decision violated the Federation Constitution and the State-level Law on the High Judicial and Prosecutorial Council, ignoring the prescribed role of the Federation House of Peoples and the High Judicial and Prosecutorial Council in the selection process. However, following strong pressure from the international community, the then Federation President annulled her decision appointing the judges, citing the withdrawal of the Croat candidate's application as the reason.

III. European partnership priorities and visa liberalization

37. There has been no progress addressing the European Partnership priorities during the reporting period. Key European Union conditions, such as the adoption

of a State-level census law, a State-level State aid law and necessary amendments to the Bosnia and Herzegovina Constitution and the Bosnia and Herzegovina Election Law, were not met. Reforms designed to create a single economic space, including the adoption of a single law on obligations and the establishment of a single system of banking supervision, also remain blocked.

38. Following the recommendation of the European Commission and its approval by the European Parliament, the Council of the European Union adopted a decision on 8 November 2010 to abolish visa requirements for Bosnia and Herzegovina citizens. The Decision came into force on 15 December 2010. The new visa-regime allows Bosnia and Herzegovina citizens who are in possession of a valid Bosnia and Herzegovina biometric passport entry into the Schengen area, Bulgaria and Romania without a visa. Bosnia and Herzegovina authorities have issued more than 630,000 biometric passports.

39. With regard to the implementation of the April 2008 laws on police reform, the Bosnia and Herzegovina Council of Ministers, in February 2011, amended an earlier decision on the handover of tasks, facilities, equipment and employees between the Bosnia and Herzegovina Ministry of Security, the State Investigation and Protection Agency (SIPA) and the Directorate for Police Coordination allowing for a special pay increment for police officials employed in the Directorate for Police Coordination. In October 2010, the Bosnia and Herzegovina Council of Ministers adopted a conclusion approving the information on construction of a new facility for the Agency for Education and Advanced Training of Personnel, which included a financial projection for the construction of the new facility for that Agency.

IV. Public administration

40. Numerous senior service appointments remain long overdue at the State level, including the appointment of a new Head of the Communications Regulatory Agency (more than three years overdue), the Head of the Indirect Tax Authority, members of the Communications Regulatory Agency Council (a year and a half overdue), and the General Manager of the Company for the Transmission of Electric Power in Bosnia and Herzegovina (one year overdue), all of which affect the efficiency of decision-making in those institutions.

41. In October 2010, the Federation Constitutional Court adopted another decision that weakened Federation institutions and opened the door to further Constitutional Court challenges to Federation and cantonal legislation. In the ruling, the Court determined that certain articles of the Law on Federation Ministries were not in accordance with provisions of the Federation Constitution, and that education and cultural policy belonged to the competency of the cantons. The Court gave the Federation Parliament six months to harmonize inconsistent provisions with the Federation Constitution, during which time the provisions shall remain in force on an interim basis. This judgement was the second successful initiative by the former Federation President to challenge legislation related to the distribution of entity and cantonal responsibilities. The implementation of this decision will impact future Croat-Bosniak coalitions at the Federation level, as Croats are expected to seek decentralization and broader local autonomy for the cantons. During the reporting period, the majority of the Cantons took steps towards establishing their own civil service administrations.

42. The Bosnia and Herzegovina Public Administration Reform Strategy and its various action plans remain only partially implemented.

V. Constitutional reform

43. No concrete progress was made on constitutional reform during the reporting period. However, under a German initiative the main political parties in Bosnia and Herzegovina continued their discussions about constitutional reform issues, such as the implementation of the 2009 ruling by the European Court for Human Rights in the "Sejdic-Finci" case. Those discussions did not lead to concrete results owing to the general political impasse in the country.

VI. Entrenching the rule of law

National Justice Sector Reform Strategy

44. The 22 December 2010 fifth Ministerial Conference saw numerous messages of support for the judiciary from both entities and the international community. The President of the High Judicial and Prosecutorial Council called for improved judicial coordination.

45. In 2010, the Justice Sector Reform Strategy 2009-2013 saw 52 per cent of its activities fully and 29 per cent partially implemented. However, these numbers are misleading as most of the alleged successes were either of less importance or actually achieved by the High Judicial and Prosecutorial Council. Activities requiring legislative amendments to ensure a higher degree of coordination, such as the Federation Law on Prosecutor's Offices, remain pending.

46. The five functional working groups met twice during the reporting period (in November 2010 and April 2011). The 9 December 2010 session of the Technical Secretariat — not attended by the Entities' Ministries of Justice — was exclusively dedicated to preparing the fifth Ministerial Conference, but also concluded that the approach to implementation must be changed. That is also the position of the international partners monitoring the implementation process, who have decided to move from a simple monitoring of the process into a more proactive support to the implementation of the Strategy's identified key projects, by engaging directly all new Ministers of Justice. This approach is also favoured by representatives of institutions responsible for implementing the strategy.

War Crimes Prosecution Strategy

47. There has been some progress in implementing the National Strategy for Processing of War Crimes. A database of outstanding war crimes cases has been established and the categorization of these cases has started. This has enabled an estimate about how many cases will be dealt with by the State-level judicial institutions and how many by lower levels. Importantly, the number of indictments in war crimes cases in 2010 has significantly increased in comparison to previous years. Also, the transfer of cases from the State to the entity level has started, with 45 cases transferred so far.

Regional judicial cooperation

48. Regional judicial cooperation in enforcement of court decisions[6] has continued to improve. By mid-February 2011, the Bosnia and Herzegovina Ministry of Justice had received 38 requests for enforcement of criminal sanctions from Croatia, enforcing 5, and 11 requests from Serbia, enforcing 2 to date. Bosnia and Herzegovina sent 44 requests to Croatia (3 enforced), and 44 to Serbia (4 enforced). In December 2010, the Court of Bosnia and Herzegovina Appellate Division confirmed the eight-year sentence rendered in Croatia in the high profile case against a former member of the Croatian Parliament for war crimes against civilians, who is now serving his sentence in a penitentiary facility in Bosnia and Herzegovina.

49. Following controversies regarding two cases of arrest of Bosnia and Herzegovina citizens pursuant to warrants issued by the Serbian prosecutor's office for alleged war crimes (Jurisic case in Serbia and Ganic case in the United Kingdom), the situation seemed to have stabilized with the adoption of a resolution at the INTERPOL General Assembly meeting in November 2010[7] in relation to cooperation with new requests concerning genocide, crimes against humanity and war crimes. This resolution concluded a process initiated by INTERPOL in June 2009 in relation to the issuance of an international red notice arrest warrants by Serbian authorities in relation to the Ganic case.

50. However, on 5 January 2011 a citizen of Croatia was arrested in Bosnia and Herzegovina at the border crossing in Orasje on the basis of an arrest warrant for war crimes issued by Serbia. Following hearings in Bosnia and Herzegovina, on 3 March 2011 the War Crimes Prosecutor's Office of Serbia dropped the charges for lack of evidence. The case emerged in spite of the Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide, signed by the Chief State Attorney of the Republic of Croatia and the War Crimes Prosecutor of the Republic of Serbia in October 2006. Similarly, Jovan Divjak, a Bosnia and Herzegovina citizen and former general, was arrested in Austria on a Serbian warrant in relation to the so-called "Dobrovoljacka Street" case.[8] The same incident had led the London's City of Westminster Magistrates' Court to reject in

[6] Amendments to bilateral agreements on mutual enforcement of court decisions in criminal matters between Bosnia and Herzegovina, Croatia and Serbia, and on legal aid in civil and criminal matters between Bosnia and Herzegovina and Serbia are in force. The Bosnia and Herzegovina Ministry of Justice also reached agreements on the mutual enforcement of court decisions in criminal matters and on legal aid with Montenegro in July 2010 (to be ratified), and is currently negotiating similar amendments to the existing agreement with the former Yugoslav Republic of Macedonia. These agreements were signed to prevent convicted persons from fleeing to neighbouring countries to avoid serving their sentence.

[7] INTERPOL, General Assembly, seventy-ninth session, Doha, 8-11 November, Resolution AG-2010-RES-10. By this Resolution, INTERPOL closed the process initiated in June 2009 with the purpose of avoiding possible misuse of INTERPOL. It decided that requests concerning genocide, crimes against humanity and war crimes, when submitted by a member country concerning a national of another member country, shall not be processed via INTERPOL channels if that other member country protests against the request within thirty days.

[8] The case carries the then-name of the Sarajevo Street where the event took place on 3 May 1992 when a JNA (Yugoslav People's Army) convoy retreating from Sarajevo was attacked by the Republic Bosnia and Herzegovina territorial defence, police forces and paramilitary units, resulting in a number of casualties. Retired Republic Bosnia and Herzegovina General Jovan Divjak was a senior officer present at the location of the incident when it occurred.

July 2010 Serbia's request for extradition of Ejup Ganic, stating in its ruling that "these proceedings are brought and are being used for political purposes and as such amount to an abuse of process of this court".

Other rule of law issues

51. In accordance with the plans of the Registries of the Court and the Prosecutor's Office of Bosnia and Herzegovina, the total number of international judges has dropped from six to four all working on war crimes cases. They are supported by six international legal officers (three in the Court and three in the Prosecutor's Office), four international investigators, and one international adviser in the Prosecutor's Office Department for Organized Crime, Economic Crime and Corruption. All positions are fully financed. After positions of international prosecutors in the Prosecutor's Office Department for Organized Crime, Economic Crime and Corruption were cut at the end of 2009, it appears there has been no progress in organized crime and corruption cases previously dealt with by the international prosecutors. In particular, this tendency appears to hold true for cases involving certain high-level political figures.

52. Long-term international support to the Court and Prosecutor's Office of Bosnia and Herzegovina should be ensured by the adoption of a Medium-Term Institutional Development Plan to help identify future priority projects at a time of decreased funds available for State judicial institutions. However, growing problems have appeared in relation to the activities of the Transition Council, the coordination body that supervises the implementation of the Registry agreement. The process of integration of the Registry into Bosnia and Herzegovina institutions is experiencing delays, owing primarily to the lack of support from the competent authorities, respectively the Bosnia and Herzegovina Ministry of Justice and Ministry of Finance. The Bosnia and Herzegovina Ministry of Justice has not yet completed integration of the Court's Criminal Defence Service. The 2004 IT system used by the Court and the Prosecutor's Office requires immediate upgrading to avoid collapse. The lack of space to accommodate the two institutions creates additional problems. While some international donors expressed interest in financing solutions, delays are encountered in fulfilling technical obligations.

53. The Federation Constitutional Court lacks three out of nine judges, which means that the Court is still unable to rule on cases of vital national interest.

High Judicial and Prosecutorial Council Working Group

54. The High Judicial and Prosecutorial Council (HJPC) Working Group tasked to draft amendments to the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, has met regularly over the past months. This working group, comprised mostly of representatives of the judiciary (from HJPC, the State, the Entities and the Brcko District) and one representative of the international community, has concentrated its work on the composition of the Council, election of its members, appointment and discipline of judges and prosecutors. Once the HJPC proposal is finalized, the Bosnia and Herzegovina Ministry of Justice intends to appoint a new, more restricted working group to prepare the final text of the amendments to be submitted to the Council of Ministers.

State Prison

55. The building of the State Prison, which is now estimated to cost 39.6 million euros, has been increasingly criticized as being too expensive and not adapted to the needs of Bosnia and Herzegovina, in particular by representatives from Republika Srpska. Overall prison capacity was increased in both Entities, and authorities from both Entities have indicated that their newly created prison space complies with all European standards while costing less than the State Prison. The project of introducing electronic bracelets for house imprisonment of persons sentenced to short terms (up to one year) or for conditional release is on stand-by, since the amendments planned by the Federation Government to Federation criminal legislation and to the special law on execution of criminal sanctions are pending.

Fight against corruption

56. There has been little progress in the fight against corruption. Recently, the High Judicial and Prosecutorial Council repeatedly called for the judiciary to dedicate more time and means to the fight against corruption. Looking more concretely at the work of the Bosnia and Herzegovina Prosecutor's Office Special Department for Organized Crime, Economic Crime and Corruption, five indictments for abuse of office were filed and confirmed by the Court of Bosnia and Herzegovina in 2010, and none so far in 2011. The Bosnia and Herzegovina Prosecutor's Office, however, indicated at the beginning of 2011 that a number of important corruption-related indictments would be filed shortly.

57. There was little progress on the appointment of a permanent director (and two deputies) of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. The special committee appointed by the Bosnia and Herzegovina Parliamentary Assembly, responsible for initiating the selection procedure for the Director of the Agency, established a ranking list of the candidates in December 2010. However, the final appointment of the Director and two deputies by the Bosnia and Herzegovina Parliament cannot be completed because the Bosnia and Herzegovina House of Peoples has yet to be constituted. Since June 2010, an Acting Director has headed the Agency, even though this temporary appointment is not in compliance with the law. The establishment and functioning of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was a requirement for the 2010 decision on visa liberalization by the European Union.

Public security and law enforcement

58. There have been increased efforts by the Federation and cantonal authorities to update internal affairs legislation to increase the operational and budgetary independence of police commissioners from their respective Ministries of Interior. The process of reviewing the laws on police officials currently in force has continued.

59. In November 2010, the Bosnia and Herzegovina Ministry of Security set up a working group for drafting amendments to the Bosnia and Herzegovina Law on Police Officials to permit the Directorate for Police Coordination to employ active police officials directly from other police bodies in Bosnia and Herzegovina until 31 December 2012. This temporary exemption from normal employment procedures could result in accelerated recruitment of new staff in the Directorate. The working group concluded its work in January 2011 and forwarded its proposal to the

Ministry of Security. In November 2010, the caretaker Federation Government appointed a new Director of the Federation Police Administration for a four-year mandate.

VII. International Criminal Tribunal for the former Yugoslavia cooperation

60. During the reporting period, the cooperation of Bosnia and Herzegovina with the International Criminal Tribunal for the former Yugoslavia remained satisfactory, the priority still being the arrest of Ratko Mladic. This was confirmed during the visit of the Tribunal Chief Prosecutor to Bosnia and Herzegovina in April 2011.

61. On 22 December 2010, the Security Council adopted a resolution establishing a residual mechanism to finish the remaining tasks of the International Criminal Tribunal for the former Yugoslavia. That body will have the authority to prosecute the most senior persons indicted by the Tribunal who are arrested after the completion of the Tribunal mandate, as well as those persons who interfere with the administration of justice. The body will not be able to raise new indictments but will be able to conduct review proceedings, supervise the enforcement of sentences and decide on pardons or commutations of sentences. For budgetary and logistical reasons, it has been recommended that the Tribunal archives and the seat of the residual mechanism be placed at the same location. The International Criminal Tribunal for the former Yugoslavia is expected to complete its work by 31 December 2014.

War criminals escape

62. Four individuals, sentenced for crimes against humanity by the Court of Bosnia and Herzegovina remain at large. Radovan Stankovic, sentenced to 20 years' imprisonment, escaped from prison in Foca in May 2007 with the assistance of local authorities. His case was the first to be transferred by the International Criminal Tribunal for the former Yugoslavia to the Court of Bosnia and Herzegovina. Two other indictees, sentenced to 13 years and 17 years, respectively, escaped in May 2009 and May 2010 while under prohibitive measures awaiting delivery of their final verdicts. In December 2010 a fourth accused escaped immediately before the pronouncement of a first instance sentence of 27 years' imprisonment for crimes against humanity.

VIII. Reforming the economy

63. Economic data for 2010[9] showed signs of improvement in selected areas. The exports of Bosnia and Herzegovina increased by 29.45 per cent over 2009, while imports increased by 10.78 per cent. As a result, the total foreign trade deficit shrunk by 5.66 per cent. Total industrial production also rose by 4.2 per cent in the Federation and 5 per cent in Republika Srpska. The average net salary in Bosnia and Herzegovina in 2010 amounted to 408 euros, an increase of 1 per cent, while the average pension amounted to 170 euros, a 1 per cent decrease. Annual inflation was

[9] Source of information: BiH Economic Planning Directorate, BiH Statistics Agency, BiH Foreign Trade Chamber.

2.1 per cent. Unemployment and investment data are worrisome: registered unemployment at the end of December was estimated at 522,080 people, or 43 per cent, while foreign direct investments in 2010 decreased by 71.4 per cent from 2009.

Indirect taxation authority difficulties

64. The Indirect Taxation Authority Governing Board has still not agreed on any long-standing issue within its competence. Since 24 June 2008, there has been no agreement on new indirect tax revenue allocation coefficients, despite the obligation under the *Rulebook on Coefficient Calculation and Payments to the Entities*[10] that they be decided on a quarterly basis. There has been no rebalancing of the collected and distributed indirect tax revenues, which is also contrary to the obligation to rebalance provided for in the Rulebook. No action has been taken to set up the ITA Governing Board Final Consumption Unit, although it was agreed by the Board on 24 June 2008. Finally, the ITA Governing Board has not yet agreed on a permanent methodology for reallocation of road toll revenue foreseen by the Bosnia and Herzegovina Law on Excise Tax. This blocks 10 per cent of all road toll revenue collected since 1 July 2009, which currently amounts to over 10 million euros.

65. Republika Srpska authorities have threatened to block all fiscal decisions in Bosnia and Herzegovina because of an alleged debt of 35 million euros between the ITA and Republika Srpska. They have threatened with new measures to preserve the revenues belonging to the Republika Srpska, stressing that those do not exclude returning indirect taxation competences transferred to the State in 2003. Those claims can be read in the context of the continued challenges of the Republika Srpska to the indirect taxation system and the competence of the State for it.

Fiscal Council

66. The Bosnia and Herzegovina Fiscal Council made no progress towards adopting a Global Framework of Fiscal Balance and Policies in Bosnia and Herzegovina for the period 2011-2013.[11] The absence of a Global Framework and consequently of a 2011 State budget,[12] poses the risk that the State will remain on austere temporary financing.[13] As a consequence, all payments at the State level are

[10] The *Rulebook on Coefficient Calculation and Payments to the Entities* was adopted by the ITA Governing Board on 24 June 2008.

[11] Based on the budget calendar, the Framework should have been adopted by the end of May 2010 to allow for the preparation of 2011 budgets at all levels. Disagreement between the Entities and the State on the State share of 2011 indirect tax revenue is the reason for delays.

[12] On 31 March 2011, the Bosnia and Herzegovina Council of Ministers adopted the Draft State Budget for 2011 and forwarded it to the Bosnia and Herzegovina Presidency as the official budget proponent. However, in the absence of a Global Framework, the chances of having the Draft Budget adopted are minimal. Moreover, adoption of the budget would require approval by both parliamentary houses at the State level and the Bosnia and Herzegovina House of Peoples has not yet been constituted.

[13] The Decision on Temporary Financing of State Institutions and International Obligations for the Period January-March 2011 was adopted by the Bosnia and Herzegovina Council of Ministers on 28 December 2010. On 12 January 2011, the Bosnia and Herzegovina Council of Ministers adopted Operational Measures for the Implementation of the Decision on Temporary Financing of State Institutions and International Obligations. On 31 March 2011, the BiH Council of Ministers extended the Decision on Temporary Financing of State Institutions and International Obligations until the end of June 2011.

now limited to salaries and utilities only. All other payments are either fully suspended or can be approved only in exceptional circumstances. No budget user can initiate any new or expand any current programme activity. The temporary financing regime directly affects the ability of the State Institutions to meet their legislative and Euro-Atlantic integration obligations.

67. The failure to adopt a Global Framework affects the State and the Entities, as it blocks disbursement under the International Monetary Fund Stand-By Arrangement and European Union Macro-Financial Assistance, without which neither Entity can meet its 2011 financial commitments. The Federation already faced suspension of all budget payments twice this year, and the Office of the High Representative had to intervene on both occasions. On 26 January 2011, the High Representative enacted the Decision on Temporary Financing of the Federation for the Period January-March 2011, which allowed for undisturbed budget transactions in the first quarter of 2011. The High Representative's 27 March 2011 Order Temporarily Suspending Certain Decisions of the BiH Central Election Commission allowed for the parliamentary adoption of the 2011 Federation budget on 26 March 2011.[14] Republika Srpska is in a difficult situation as well and — as noted above — is seeking to fill the budget. The situation will worsen if IMF and European Union disbursement criteria are not met.

Electricity Transmission Company

68. There has been little progress in addressing the problems related to the Bosnia and Herzegovina Transmission Company (Transco). Due to the political situation, the company's management and most of its Management Board are in technical mandates. This includes the Audit Board, which plays a key role in the selection of an independent auditor. The General Manager's refusal to permit an independent audit follows his refusal to permit the State Auditor to conduct an audit in Transco in September 2009. Moreover, all major investments in the electricity transmission infrastructure remain blocked, despite deposited investment funds that have grown to over 100 million euros. The electricity transmission grid has not been upgraded for almost three years and its capacity to sustain all the grid users is at risk. In a 3 February 2011 assessment, these problems were noted by the three trade unions representing Transco workers from Banja Luka, Mostar and Sarajevo. All share identical views, even though their ethnic composition is different.

IX. Return of refugees and displaced persons

69. On 24 June 2010, the Bosnia and Herzegovina House of Peoples adopted a revised Strategy for the Implementation of Annex 7 of the General Framework Agreement for Peace. Due to the absence of a new government, there has been no progress made in implementation. There are still approximately 113,000 persons registered as internally displaced, more than 7,000 of whom live in poor conditions in collective centres.

70. A new UNHCR envoy working on the protracted displacement situation in the Western Balkans, visited the region in February to work with the Governments to

[14] The 2011 Federation Budget was published in the *Official Gazette of the Federation of Bosnia and Herzegovina*, number 14/11 of 30 March 2011.

devise regional refugee return projects. The revised Annex 7 Strategy will be part of regional discussions, and presents a good opportunity to further the aim of the Strategy to close the chapter of displacement in Bosnia and Herzegovina by 2014. With the Office of the UNHCR in Bosnia and Herzegovina acting as the lead international agency in this field, the Office of the High Representative will continue to support its efforts.

X. Mostar

71. On 26 November 2010, the Constitutional Court of Bosnia and Herzegovina ruled on a case submitted by the HDZ BiH that a number of provisions of the Mostar City Statute were unconstitutional. The provisions in question are primarily related to the electoral system for the City Council. While Croat-dominated parties expressed discontent that the ruling did not go far enough, Bosniak-dominated parties expressed concern that it will impact negatively on power-sharing in the city.

72. On 4 April 2011, the Mostar City Council unanimously adopted the City budget for 2011. Given the delays and disputes that have surrounded the adoption of the budget in previous years, the decision offers a ray of hope that the Mayor and the City Council can press ahead and address a wide range of long-standing challenges facing the city on its path to full reintegration.

XI. Brcko District[15]

73. The Brcko District Supervisor, the European Commission and the Energy Community Secretariat continued to work on the Brcko electricity issue. By late January 2011 steps had been taken that effectively closed the Brcko electricity issue.[16]

Tax revenue distribution

74. This issue is important to Brcko because 65-70 per cent of the District revenues come from indirect taxes. To date, however, there is no permanent

[15] See also paragraph 7 of this report with reference to the importance of the Inter-Entity Boundary Line for Brcko.

[16] On 21 December 2010, the Republika Srpska National Assembly adopted amendments to the Republika Srpska Electricity Law that are in line with the State Law as amended in September 2009. On 28 December 2010, the State Electricity Regulatory Commission launched internal procedures required to assume regulatory oversight over Brcko, and on 29 December, the Brcko District Assembly harmonized its Law on Electricity with the State Law related to SERC's responsibilities in Brcko. All these developments created conditions for the Public Utility Company to conclude a 12-month renewable contract for electricity supply to Brcko with Elektroprivreda Republika Srpska on 30 December 2010. The contract allows Brcko residents to be supplied under transparent conditions and regulated prices. On 12 January 2011, SERC adopted a set of Brcko-related by-laws, namely, the Rulebook on Issuance of Temporary Licences for the Performance of Activities of Electricity Distribution and Supply in Brcko District and the Rulebook on the Method for Determining Temporary Tariffs for Non-Eligible Customers in Brcko District. At its 18 January session, SERC adopted the Decision on issuance of temporary licence to the Public Utility Company for activities of electricity distribution and supply in Brcko District. The Decision was issued for the period from 19 January 2011 to 18 January 2013. On 27 January 2011, SERC determined temporary tariff rate electricity prices for non-eligible (tariff) customers in Brcko District.

solution. The protection of Brcko's interests rest on a decision imposed by the High Representative in 2007. Given the Republika Srpska formal rejection of the High Representative's authority to legislate, given prior collusion by the Entities to short-change the District, and given the District's lack of a vote on the ITA Governing Board, there are questions as to the sustainability of this arrangement following the eventual departure of the Office of the High Representative. Brcko District Institutions have been encouraged by the Brcko District Supervisor to develop their own proposals as a viable basis for negotiations with the Entities, but have so far failed to do so.

Voter rights

75. Approximately 25 per cent of Brcko's residents (28,000 persons) could not cast their votes in the recent General Elections, as Brcko residents without entity citizenship are unable to vote. This prompted a decision by the Central Election Commission allowing Brcko residents to declare an Entity voting option in cases where they had neither Entity citizenship nor a declared Entity voting option. Approximately 3,000 Brcko residents used this opportunity and expressed their preference. The number of people without entity citizenship continues to increase as new identity cards are issued. In order to resolve the issue, the Federation will need to enact relevant regulations. Only after all these conditions are met and Brcko District residents are fully able to declare or change their citizenship will this issue be resolved.

XII. Defence reform

76. In January 2011, the President of the Republika Srpska stated publicly that Republika Srpska would insist on a referendum on NATO membership. Rhetoric aside, Bosnia and Herzegovina made no progress on resolving defence property, a condition for starting the NATO Membership Action Plan and Objective 2 in the so-called "5+2 agenda" of objectives and conditions for the closure of the Office of the High Representative.

77. Due to paralysis in forming a State-level government, the Bosnia and Herzegovina State budget for 2011 has not been approved. The Bosnia and Herzegovina Ministry of Defence and the Armed Forces of Bosnia and Herzegovina personnel are therefore faced with limited possibilities to engage in training and other activities during the first months of 2011.

78. Between January 2010 and April 2011, the Bosnia and Herzegovina Armed Forces released close to 2,000 military personnel from duty. About half of those registered for a follow-on NATO Trust Fund — the so-called *NATO Perspektiva Program* — to assist military personnel to transition into civilian jobs. Fewer than a hundred have received assistance to date. The Bosnia and Herzegovina Ministry of Defence met with the Entity Pension Funds and the Entity Ministries for Veterans to discuss the Amended Law on Service in the Armed Forces of Bosnia and Herzegovina. The law was amended just before the October 2010 elections to provide more generous retirement benefits for the soon-to-be-released personnel. Under the legislation, approximately 80 per cent of *NATO Perspektiva Program* beneficiaries are able to exercise the option for earlier retirement, provided funds are found in the Bosnia and Herzegovina State budget. Due to the lack of a state budget, no such funding was made available. Numerous retired soldiers threatened to disrupt the Military World Ski Championships, taking place in Bosnia and

Herzegovina from 21 to 25 February 2011, unless benefits were paid under the amended provisions of the law. Although protests were held in front of the Bosnia and Herzegovina Parliament, no major disruptions to the sports competition were reported.

XIII. Intelligence reform

79. At its regular session, held on 9 March 2011, the Bosnia and Herzegovina Presidency approved the 2011 Intelligence-Security Policy Platform, which contains the general work guidelines for the Bosnia and Herzegovina Intelligence-Security Agency, OSA. The Bosnia and Herzegovina Parliamentary Assembly has yet to adopt any of OSA Annual Intelligence-Security Policy Platforms.

80. On 1 February 2011, the Secretariat of the Bosnia and Herzegovina Joint Parliamentary Assembly Committee for Oversight of OSA Work was again fully staffed, as the posts of the Committee's Secretary and Expert Adviser were filled, following personnel changes late in 2010. The new Committee members are still to be appointed, owing to the failure of the Federation to elect delegates to the Bosnia and Herzegovina House of Peoples.

XIV. European Union Military Force

81. EUFOR troop strength was reduced to some 1,400 personnel after October 2010, but it retains the capacity to bring in over-the-horizon reserves. Its headquarters and peace enforcement capability are based in the Sarajevo area, with liaison and observation teams present throughout the country. EUFOR has also continued to work closely with the Bosnia and Herzegovina Armed Forces, and the introduction of capacity-building and training mandates were welcomed by the Bosnia and Herzegovina Armed Forces as a step towards further strengthening Bosnia and Herzegovina capacities. Contributing to a safe and secure environment continued to be the key EUFOR role — one widely welcomed by Bosnia and Herzegovina citizens. EUFOR also helped the Office of the High Representative and other international organizations to fulfil their respective mandates. In so doing, EUFOR has continued to serve as an important factor of stability in the country.

82. Preparations are under way to continue the EUFOR executive presence beyond 2011. It is important for EUFOR to retain an executive mandate for at least some months after the closure of the Office of the High Representative. The European Union Special Representative has continued to offer political guidance and support to the EUFOR mission.

XV. European Union Police Mission

83. The European Union Police Mission has continued to support the development of the law-enforcement agencies in Bosnia and Herzegovina in the fight against organized crime and corruption, enhancing cooperation between police and prosecutors, police and the prison structure, as well as in promoting accountability within police bodies. The mission has continued its work on the harmonization of the legal framework for police officers and police bodies and supported further implementation of the police reform laws of April 2008, through its mentoring of the Directorate for Police Coordination. All bodies and agencies foreseen by the April 2008 police reform laws are now formally established and possess the

necessary conditions to begin to function. In view of the expiry of its mandate at the end of 2011, the mission will continue to focus on developing the operational and coordination role of the Directorate for Police Coordination, strengthening the State Investigation and Protection Agency as the lead investigative agency, promoting cooperation among law enforcement agencies and fostering cooperation between police officials and Ministers of Interior.

XVI. European Union Special Representative

84. The European Union Special Representative mandate has been extended until 31 August 2011. The European Union Special Representative has continued to coordinate the various European Union missions on the ground. In line with his mandate, the European Union Special Representative has offered local political guidance to EUFOR and the European Union Police Mission. Cooperation with the European Union delegation and the European Union member States has also been intense.

85. The European Union is finalizing preparations to establish a reinforced, single European Union representative in Bosnia and Herzegovina who will take the lead in supporting Bosnia and Herzegovina on European Union-related matters. The High Representative will thus no longer serve the European Union Special Representative. The single European Union Representative, and head of the European Union delegation, will have a broad and balanced set of instruments to maximize the incentives provided by the European Union, in line with established procedures. The European Union is also determined to support the General Framework Agreement for Peace and has adopted a set of restrictive measures in this regard.

XVII. Future of the Office of the High Representative

86. The Peace Implementation Council Steering Board met at the level of Political Directors twice during the reporting period, on 30 November and 1 December 2010 and on 29 and 30 March 2011. The Peace Implementation Council Steering Board has continued to express its concern over the political situation in the country, as well as the ongoing failure to address the remaining objectives and conditions for the closure of the Office of the High Representative. As a result of the Bosnia and Herzegovina authorities' failure to meet these objectives and conditions, the Steering Board has thus far been unable to take a decision on the closure of the Office of the High Representative. The next meeting of the Steering Board of the Peace Implementation Council is scheduled to take place on 6 and 7 July 2011.

XVIII. Reporting schedule

87. In keeping with the proposals of my predecessor to submit regular reports for onward transmission to the Security Council, as required under Security Council resolution 1031 (1995), I herewith present my fifth regular report. Should the Secretary-General or any Security Council member require information at any other time, I would be pleased to provide an additional written update. My next regular report to the Secretary-General is scheduled for November 2011.

United Nations S/2011/284

Security Council

Distr.: General
5 May 2011

Original: English

Letter dated 8 April 2011 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

I am pleased to provide my report as the President of the Governing Council on the results of the Governing Council's seventy-first session, which was held in Geneva from 5 to 7 April 2011.

On the consultations between Iraq and Kuwait under the auspices of the United Nations Compensation Commission regarding the unpaid balance of approximately $21 billion that remains owing to Kuwait, the Council took note of the briefing and efforts of the Executive Head of the Commission and also took note of the statements made by the delegations of the Governments of Iraq and Kuwait at the opening plenary session regarding this issue. The Council welcomed the formation of the Joint Iraq-Kuwait Ministerial Committee and its first meeting in Kuwait on bilateral issues and encouraged consultations on the outstanding compensation under the auspices of the Commission. The Council noted its hope that there continue to be a strong interest and willingness on both sides to move forward on this issue and requested that the Executive Head continue his efforts and keep the Governing Council informed.

On the issue of the arrangements for ensuring that payments are made to the Compensation Fund, the Governing Council recalled that in its resolution 1956 (2010), the Security Council provides for the transition to a post-Development Fund mechanism and the transfer of the oversight function from the International Advisory and Monitoring Board for Iraq to the Iraq Committee of Financial Experts by the end of June 2011. A number of Governing Council members highlighted at the opening plenary, in the presence of the delegations of Iraq and Kuwait, the importance of the current or similar arrangements for the deposit of 5 per cent into the Compensation Fund remaining in place following the expiration of the Development Fund for Iraq and the mandate of the International Advisory and Monitoring Board for Iraq at the end of June 2011. In its conclusion on this issue, the Governing Council also requested that I emphasize the importance of such arrangements in this report. The Council also noted that in a meeting with the head of the Iraq Committee of Financial Experts and the Permanent Representative of Iraq in Geneva, the Executive Head had received assurances that the current arrangements would remain unchanged following the transfer to a post-Development Fund mechanism; this was reinforced in the statement made by the Permanent Representative of Iraq at the opening plenary.

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With respect to the Follow-up Programme for Environmental Awards established pursuant to decision 258 (2005), with the Governing Council having concluded at its seventieth session that the mandate of the Follow-up Programme under decision 258 (2005) can and should be fulfilled in the near term and having indicated its intention to adopt a decision in this regard at the current session, high-level delegations from the Governments of Iraq, Jordan, Kuwait and Saudi Arabia attended the session at the invitation of the Governing Council and shared their views. The Governments of Jordan, Kuwait and Saudi Arabia also provided information to the Governing Council on the status of implementation of their respective projects.

In considering the progress made by the participating Governments under the Follow-up Programme for Environmental Awards, the Council adopted decision 269 (S/AC.26/Dec.269 (2011)) concerning the fulfilment of the Follow-up Programme. This decision provides that the mandate of the Programme will be fulfilled upon the participating Governments' establishment of identified structural systems and controls and the provision of adequate assurances for their maintenance and for the use of the award funds for the successful completion of the projects and a determination to that effect by the Governing Council.

The next Council session will be held from 11 to 13 October 2011.

With the recent payment made on 27 January 2011 to the nine remaining successful claimants (in the corporate and government claims categories) from the Compensation Fund, all awarded to Kuwait, the overall amount of compensation made available to date by the Commission is approximately US$ 31.4 billion, with a total outstanding balance of $21 billion remaining to be paid. The next payment is scheduled to be made on 28 April 2011.

(*Signed*) Reinhard **Schweppe**
President of the Governing Council

United Nations A/65/833-S/2011/285

General Assembly
Security Council

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5 May 2011

Original: English

General Assembly
Sixty-fifth session
Agenda items 34, 39, 66 and 75

Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Elimination of racism, racial discrimination, xenophobia and related intolerance

Responsibility of States for internationally wrongful acts

Security Council
Sixty-sixth year

Letter dated 29 April 2011 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General

Over the course of the current session of the General Assembly, the representative of Azerbaijan to the United Nations has circulated a number of propaganda papers full of misinformation and falsifications, including the baseless allegation of a killing by an Armenian sniper of a 9-year-old Azerbaijani child as a result of the ceasefire violations.

That allegation is based on groundless information received from the Office of the Prosecutor General of Azerbaijan, as noted in document A/65/821-S/2011/251. What has become a standard product of Azerbaijani propaganda, the latest letter once again tries to discredit Armenia and Nagorno Karabakh. The death of the child was confirmed neither by the OSCE Co-Chairs nor by the personal representative of the OSCE Chairman-in-Office.

It is unethical to circulate such a defamatory document at the United Nations, which serves no other purpose than to shatter the hope of a peaceful coexistence between peoples. Rather than drafting such a shameful document exploiting the life of a child as a propaganda tool, Azerbaijan should focus on cooperating with the Co-Chairs of the OSCE Minsk Group and its missions and do its part in conducting the investigation, as set out in the statement made by the Armenian, Russian and Azerbaijani Presidents at their meeting in Sochi in March 2011. In that context, Azerbaijan should stop obstructing the work of the OSCE Mission. While the Nagorno Karabakh authorities followed their early commitment and allowed the

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OSCE monitoring missions to conduct and assess the situation as agreed, Azerbaijan continues to refuse to grant access to the OSCE Mission despite its prior agreement.

Azerbaijan should abandon its adventurous practice of provocations along the Line of Contact, which is a serious threat to peace and stability in the region. Such actions are also violations of the 1994 Ceasefire Agreement between Azerbaijan, Nagorno Karabakh and Armenia and are contrary to the stated commitment to refrain from the use of force or the threat of the use of force.

It is also important that Azerbaijan revisit its decision to reject the call from the United Nations Secretary-General and the Minsk Group Co-Chairs to remove the snipers from the Line of Contact. This unacceptable behaviour of the Azerbaijani leadership has already resulted in the death of six servicemen of the Defence Army of the Nagorno Karabakh Republic since the above-mentioned meeting of Presidents.

I would like to take this opportunity to stress once again that Armenia advocates the need for a peaceful resolution of the Nagorno Karabakh issue through the implementation of confidence-building measures necessary to consolidate and strengthen the ceasefire regime.

I should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda items 34, 39, 66 and 75, and of the Security Council.

(*Signed*) Garen **Nazarian**
Ambassador
Permanent Representative

United Nations S/2011/286

Security Council

Distr.: General
5 May 2011

Original: English

Identical letters dated 5 May 2011 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

Upon instructions from my Government, I have the honour to transmit herewith a letter which represents the position of the Syrian Arab Republic on the thirteenth semi-annual report of the Secretary-General on the implementation of Security Council resolution 1559 (2004) (S/2011/258) (see annex).

I would highly appreciate it if the present letter and its annex could be circulated as a document of the Security Council before the discussion of this report by the Council.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

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Annex to the identical letters dated 5 May 2011 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

[Original: Arabic]

The references made in the report to the Syrian Arab Republic's efforts to implement the provisions of Security Council resolution 1559 (2004) are an explicit acknowledgement that Syria has fulfilled all obligations incumbent on it under that resolution. It is therefore no longer acceptable for the Secretary-General to introduce Syria into his reports on the implementation of resolution 1559 (2004). The report notes not only that presidential and parliamentary elections took place in a free and fair manner in Lebanon (i.e., without foreign interference or influence), but also that Syria had withdrawn its troops and military equipment from Lebanon and established full diplomatic relations with Lebanon. The reference made in the report to joint efforts by Syria and Saudi Arabia to address the Lebanese political crisis is yet another indication that Syria is doing its utmost to preserve the security and stability of Lebanon.

Syria reiterates that it does not accept the references that were made in the report to the delineation of the Syrian-Lebanese border, which is a bilateral matter. It reaffirms that the real obstacle to the final delineation of the Syrian-Lebanese border is Israel's continued aggression and its occupation of the Syrian Golan and the Shab'a Farms. This occupation makes it impossible to delineate the border in those areas. The international community must take the steps required to compel Israel to withdraw from the Lebanese and Syrian territory which it occupies, in accordance with internationally recognized resolutions, including Security Council resolutions 242 (1967) and 338 (1973), and the principle of land for peace, in order to achieve a just and comprehensive peace in the region.

Those who claim to care about Lebanon's stability and territorial integrity should also care about its security and independence. Therefore, effective pressure must be brought to bear on Israel in order to compel it to withdraw from the Lebanese territory it continues to occupy. Steps must be taken to prevent and put an end to Israeli violations.

The Palestinian presence in Lebanon is governed by Lebanese-Palestinian agreements which do not concern Syria. With respect to the Palestinian positions located along the Syrian-Lebanese border that are noted in the report, we reiterate that all those positions lie within Lebanese territory. Therefore, Syria will not intervene in this matter. We also reiterate that the primary reason for the Palestinian presence in Lebanon and other neighbouring States, including Syria, is the continued occupation by Israel of Palestinian territory and its refusal to implement United Nations resolutions, including General Assembly resolution 194 (III), which guarantees the Palestine refugees the right to return to the homes from which they were expelled.

The authors of the report should respect the independence and sovereignty of Lebanon and should not interfere in its internal affairs on any pretext whatsoever. They should also not continue to overlook that, in order to ensure Lebanon's security and stability, it is vital to deter Israel's continual violations and end its occupation of Lebanese territory.

We reaffirm that, if the international community wishes to play a positive role in Lebanon, it must act swiftly to put an end to the Israeli occupation of Lebanese territory, which would bolster Lebanon's security and independence, and as a result, have a positive impact on Syria and the entire region.

Lastly, the Syrian Arab Republic reaffirms its support for the stability and security of Lebanon, for its efforts to liberate the parts of its territory occupied by Israel, and for its territorial integrity, sovereignty and independence.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

United Nations S/2011/287

Security Council

Distr.: General
5 May 2011

Original: English

Letter dated 5 May 2011 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General

I have the honour to refer to Security Council resolution 1973 (2001) adopted on 17 March 2011. In accordance with paragraph 14 of that resolution, I wish to inform you that, in exercise of the authority conferred by paragraph 13 of the resolution, on 13 April 2001 *HMS Liverpool*, patrolling off the coast of Libya under operational control of the North Atlantic Treaty Organization, boarded and inspected the Maltese registered vessel *MV Setubal Express*. In accordance with paragraph 15 of the resolution, a written report is being submitted to the Committee established pursuant to resolution 1970 (2011).

I would be grateful if could circulate the present letter as a document of the Security Council.

(*Signed*) Mark **Lyall Grant**

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United Nations S/2011/288

Security Council

Distr.: General
16 May 2011

Original: English

Note verbale dated 6 May 2011 from the Permanent Mission of Egypt to the United Nations addressed to the Secretary-General

The Permanent Mission of the Arab Republic of Egypt to the United Nations presents its compliments to the Secretary-General, and has the honour to refer to Security Council resolutions 1970 (2011) and 1973 (2011), concerning the situation in the Libyan Arab Jamahiriya.

The Permanent Mission of the Arab Republic of Egypt wishes to inform the Secretary-General that the Government of Egypt, in accordance with the aforementioned resolutions, has taken measures during the past four months to facilitate the delivery of humanitarian assistance and the evacuation of foreign nationals from Libya as follows:

1. The Egyptian Red Crescent, through a team of 37 personnel and volunteers, is operating at the Saloum border crossing, in close coordination with the Egyptian armed forces, government agencies and international organizations, to provide humanitarian assistance and relief measures to the 4,000 foreign nationals evacuating Libya daily, and is facilitating the evacuation of tens of thousands of individuals present at the Egyptian side of the border.

2. The Egyptian Government has facilitated the crossing of 89 shipments of humanitarian assistance and a mobile intensive care unit to Libya in cooperation with the Libyan Red Crescent, UNICEF, the Office of the United Nations High Commissioner for Refugees, the Arab League and the Organization of the Islamic Conference.

3. The Egyptian Ministries of Labour and Social Affairs continue to cooperate with Egyptian civil society to provide humanitarian assistance and relief measures to all Egyptian nationals returning from Libya and their families, with an average of 3,000 individuals daily.

4. The Egyptian Government has facilitated the transit of 63 tons of non-food supplies and 1,000 tons of food supplies in cooperation with the World Food Programme, 31 medical and food shipments from the United Arab Emirates, and the Arab League convoy for humanitarian assistance, as well as the humanitarian convoy of the Arab Doctors Union.

5. The Government also facilitated the transit of the humanitarian convoy of the International Committee of the Red Cross, containing 5 tons of humanitarian supplies.

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6. The Egyptian Government continues to closely cooperate with the Office for the Coordination of Humanitarian Assistance and its assessment team and operations team in Libya, and continues to closely coordinate with the Office in order to render all necessary support to the transit of international humanitarian and relief assistance to the Libyan people.

7. Finally, the Government of Egypt continues its cooperation with the International Organization for Migration to facilitate the evacuation of foreign nationals present at the Egyptian side of the border through its sea and airports in Alexandria and Cairo.

The Government of Egypt will continue to take all necessary measures to provide humanitarian and other relief assistance to the Libyan people and all nationals evacuating Libya, and stands ready to intensify its cooperation with the United Nations and the international community to evacuate foreign nationals present at the Egyptian side of the border.

The Permanent Mission of the Arab Republic of Egypt would appreciate the circulation of this note verbale to all Member States as a document of the Security Council.